

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

| |
|---|
| California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115. |
|---|

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re D.V., et al., Persons Coming
Under the Juvenile Court Law.

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.V.,

Defendant and Appellant.

B291778

(Los Angeles County
Super. Ct. No. CK54709B—G)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Lisa R. Jaskol, Judge. Affirmed.

John L. Dodd, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel and Brian Mahler, Deputy County
Counsel for Plaintiff and Respondent.

D.V. (father) appeals from a judgment of the juvenile court that declared father's minor children juvenile court dependents and granted full legal and physical custody of the children to their mother, S.T. (mother). We find no error, and thus we affirm.

FACTUAL AND PROCEDURAL HISTORY

A. Background

Father and mother have seven children: Michael (born in August 1999), D.V. (born in May 2001), David (born in April 2002), Isaac (born in Sep. 2003), Vanessa (born in June 2008), S.V. (born in Oct. 2011), and Orion (born in June 2013).¹

The family has 10 prior dependency referrals, the earliest of which dates back to 1999. In February 2004, a substantiated referral resulted in the Los Angeles County Department of Children and Family Services (DCFS) filing a dependency petition on behalf of the older children, alleging that father's history of domestic violence and mental health issues placed the children at substantial risk of suffering serious physical harm. The juvenile court assumed jurisdiction over the children in July 2004, and terminated its jurisdiction in 2005.

Father has a criminal history dating back to 2001, including convictions for violating a domestic violence restraining order, willful cruelty to a child, and corporal injury to a spouse.

B. Present Referral and Investigation

In December 2016, DCFS received a referral alleging that D.V., David, mother, and maternal grandmother had been injured when father deliberately crashed mother's van into other

¹ Michael turned 18 in August 2017, and thereafter was dismissed from the petition. He is not a subject of this appeal.

vehicles. DCFS interviewed mother, maternal grandmother, and the children, who reported that in July 2016, mother and the children had moved out of the family home, where father continued to live. Michael spent the night of December 8, 2016 with father, and on December 9, 2016, mother, maternal grandmother, D.V., and David drove to father's house to pick up Michael and to collect some of their belongings. Before mother and the children drove away, father ran to mother's van, climbed into the front seat, and tried to push mother out of the vehicle. Mother was able to hang on to the steering wheel, but was partially hanging out of the vehicle. David, who had not yet gotten into the van, tried to pull father out; father pushed David and kicked him in the stomach. With mother still hanging out of the van, father drove five blocks, ramming into 10 other vehicles as he did so. D.V. jumped or fell out of the van, landing on her face and injuring her foot. Eventually, father crashed the van into another car, got out of the vehicle, and walked away. Mother, Michael, D.V., David, and maternal grandmother sustained cuts, scrapes, and bruises.

Father was arrested and charged with domestic violence, child endangerment, carjacking, and criminal threats. On December 13, 2016, the criminal court issued a protective order directing father not to have any contact with mother, Michael, D.V., David, or maternal grandmother for three years.

C. Petition; Detention Hearing

In January 2017, DCFS filed a petition alleging jurisdiction over the children pursuant to Welfare and Institutions Code²

² All subsequent undesignated statutory references are to the Welfare and Institutions Code.

section 300, subdivisions (a), (b), and (j). As to father, the petition alleged that father attempted to push mother out of a moving vehicle and intentionally drove the vehicle into parked cars while mother, Michael, D.V., and the maternal grandmother were in the vehicle; threatened to kill maternal grandmother; had been convicted of willful cruelty to a child; and had violated criminal protective orders. Father's violent conduct was alleged to place the children at substantial risk of serious physical harm. As to mother, the petition alleged that mother struck Vanessa with a belt and mother's hand.

At the January 4, 2017 detention hearing, the juvenile court found a prima facie case for detaining the seven children. It gave DCFS temporary custody over the children and ordered them placed with mother. The court denied father's request for visitation with the children.

D. Jurisdiction and Disposition Investigation; Initial Hearing

In March 2017, DCFS reported mother was cooperative and that all of the children wished to remain with mother. Several of the children reported being afraid of father and said they did not wish to see him. DCFS recommended the petition be sustained and the children placed with mother under DCFS's supervision.

A contested jurisdiction/disposition hearing commenced on March 15, 2017. Representing himself, father called mother to testify. Father then asked the court to appoint an attorney to represent him, which the court agreed to do. The court continued the hearing to May. Subsequently, it continued the hearing seven additional times.

E. Continued Jurisdiction/Disposition Hearing; Order

In January 2018, DCFS advised the court that father had been sentenced to seven years in state prison. Mother and the children had been participating in weekly therapy, and the therapist had no concerns about mother's ability to care for the children or ensure their safety. DCFS recommended that the court terminate jurisdiction with a family law order granting mother sole legal and physical custody of the children.

The jurisdiction/disposition hearing finally concluded on July 30, 2018, more than 16 months after it began. The court sustained the six counts of the petition alleging abusive conduct by father, as follows:

Counts a-1, b-1, j-1: On December 8, 2016, father attempted to push mother out of a moving vehicle and intentionally drove the vehicle into parked cars while mother, Michael, D.V., and the maternal grandmother were in the vehicle. Father has prior convictions for willful cruelty to a child, and in June 2017 was convicted of corporal injury to a spouse, felony child endangerment, and misdemeanor hit and run (Pen. Code, §§ 273.5, subd. (f)(1), 273a, subd. (a); Veh. Code, § 20002, subd. (a)). Father's violent and assaultive behavior places the children at substantial risk of serious physical harm.

Counts a-2, b-2, j-2: On December 8, 2016, father physically abused David by forcefully pushing him to the ground and kicking his stomach. On a prior occasion, father punched David in the face, resulting in a laceration. Father's physical abuse places David and his siblings at substantial risk of serious physical harm.

The court dismissed counts a-3, b-3, and j-3, which alleged physical abuse of Vanessa by mother.

With regard to disposition, father's counsel urged the court to order that the children remain in father's care "with an appropriate plan; that a paternal relative be the caretaker." Father's counsel further urged that it was in the children's best interests to have contact with father "because he has been their primary custodian and it is important to strengthen and keep that relationship strong." The children's counsel objected to visits between father and the children.

The court granted mother sole legal and physical custody of the children and terminated its jurisdiction. Father was granted monthly monitored visits with the four youngest children, supervised by a professional monitor to be paid for by father. Father was not granted visits with D.V. and David until the criminal protective order expired. Father was ordered not to have any contact with mother.

Father timely appealed.

DISCUSSION

Father contends the juvenile court erred in sustaining the dependency petition because there was no evidence of a current risk of serious harm to the children at the time of the hearing. Specifically, father urges (1) he did not pose a risk to the children because he was incarcerated, and the children were protected by a criminal protective order, and (2) the court's termination of jurisdiction was inconsistent with a finding that the children were at current risk of harm.

We review the order sustaining the allegations of the petition for substantial evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) " 'In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or

uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.” ’ ’ ”
(*Ibid.*)

A. *Substantial Evidence Supports the Juvenile Court’s Jurisdictional Findings*

Section 300, subdivision (a) provides that a child is within the jurisdiction of the juvenile court if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian.” For purposes of this subdivision, “a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm.” (§ 300, subd. (a).)³

³ “ ‘When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence.’ ” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) Therefore, although the juvenile court found three separate jurisdictional bases for jurisdiction (§ 300, subds. (a), (b),

Father contends the juvenile court erred in sustaining the dependency petition because there was no evidence of a current risk of serious harm to the children at the time of the hearing. In support, he notes that he is serving a lengthy prison term and the children are named in a criminal protective order. Thus, he urges, at the time the juvenile court sustained the petition, “[t]here was no need for dependency jurisdiction.”

Father’s contention is without merit. As the statutory language makes clear, jurisdiction is appropriate under section 300, subdivision (a) if, among other things, a child “‘is at substantial risk of serious physical harm *in the future*’”—that is, there is evidence “‘showing a substantial risk that past physical harm will reoccur.’” (*In re David M.* (2005) 134 Cal.App.4th 822, 829, italics added, abrogated on other grounds in *In re R.T.* (2017) 3 Cal.5th 622, 628; see also *In re Israel T.* (2018) 30 Cal.App.5th 47, 51.) In other words, for a juvenile court to sustain a dependency petition, it need not conclude children are *presently* at risk of harm—rather, it must reasonably believe there is a substantial risk that the children may be victims of serious physical harm in the *future*.⁴

In the present case, there was substantial evidence that father had deliberately crashed the family vehicle into parked cars while two of his children, their mother, and their

and (j)), we will focus our discussion on section 300, subdivision (a).

⁴ Were the law otherwise, the juvenile court would be unable to assert jurisdiction over children who had been removed from parental custody and placed in foster care at the detention hearing.

grandmother were in (or partially in) the vehicle. Although it was not entirely clear what precipitated father's violence, mother and several of the children reported father was upset at mother and the maternal grandmother. Father did not take responsibility for his actions, nor was there any evidence that he had taken any steps to manage his obvious anger issues. As such, the juvenile court could reasonably infer that father posed a risk of future serious physical harm to all of his children.

Nor are we persuaded that the trial court erred in concluding that the risk to the children was not sufficiently ameliorated by the criminal protective order or father's prison sentence. Significantly, the criminal protective order named only three of father's seven children, and it thus provided no protection to father's four other children. Further, while father is presently serving a seven-year sentence, he will be eligible for parole in well less than seven years, when several of his children will still be minors. (See Pen. Code, §§ 2933, 2933.1.)⁵ As such, without juvenile court intervention, the younger children would still be subject to father's legal and physical custody upon his release. For all of these reasons, substantial evidence supported the juvenile court's jurisdictional findings.

B. The Juvenile Court's Findings Were Not Inconsistent With Its Order Sustaining the Dependency Petition

Father asserts that because the juvenile court both sustained the dependency petition *and* terminated its jurisdiction on July 30, 2018, it "logically follows [that] the initial exercise of jurisdiction was improper." We do not agree. The court's exercise

⁵ Father was sentenced to seven years for corporal injury to a spouse, and two years for child endangerment.

of jurisdiction over the children was based on its findings that the children had suffered, or were at substantial risk of suffering, serious physical harm inflicted nonaccidentally by father, who at the time of detention shared custody of the children with mother. The court's dispositional order concluded that the children could be adequately protected by transferring sole legal and physical custody of the children to mother, and by limiting father's contact with the children to infrequent, professionally-monitored visits. We perceive no logical inconsistency between these findings. Instead, they are premised on the common-sense conclusion that since it was father's conduct that placed the children at risk, the children could be adequately protected by limiting father's rights to contact the children in an unsupervised setting and to make legal decisions on their behalf.

Our colleagues in Division Seven similarly concluded in *In re Destiny D.* (2017) 15 Cal.App.5th 197, 211–212 (*Destiny D.*), where a dependent child's father urged there was an "inherent conflict" between the juvenile court's jurisdiction finding, on the one hand, and its order the same day terminating jurisdiction after releasing the child to her mother, on the other. The court disagreed, concluding that viewed in the aggregate, the court's findings were "fully reconcilable." It explained: "Having dismissed the allegations concerning domestic abuse on the ground the restraining order obtained by [mother] eliminated any risk of harm, the juvenile court focused on the risks [father's] alcohol abuse posed for [the child] in connection with [father's] visitation rights and whether [mother's] insight into the effects of such alcohol abuse were too recent to adequately protect [the child] from harm. By modifying the superior court's visitation order to require monitored visitation for [father] and prohibiting

[mother] from serving as the monitor, the court eliminated those risks, and thereafter reasonably concluded further court supervision was unnecessary.” (*Id.* at p. 212.)

Father suggests *Destiny D.* is distinguishable because in the present case, “nothing in the exit order eliminated any purported ‘risk of harm’ to the children.” We do not agree. As we have said, the juvenile court’s jurisdiction findings concluded that father’s continued contact with the children placed them at risk of harm. The exit order made mother the children’s sole legal and physical custodian and limited father’s contact with the children to monitored visits. Therefore, as in *Destiny D.*, the exit order addressed precisely the risks on which the court’s exercise of jurisdiction was premised. Accordingly, the orders assuming and then terminating jurisdiction were fully reconcilable based on the circumstances of the present case.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

LAVIN, J.

DHANIDINA, J.